IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1062 OF 2005
IN
NOTICE OF MOTION NO.2818 OF 2003
IN
SUIT NO. 2852 OF 2003

Mohammed Hanif Siddique .. Appellant

versus

Kamlakar Ganpat Bhoir .. Respondent

...

Mr.A.M. Saraogi for the appellants.

Mr.V.S. Kapse i/b Mr.P.S. Tiwari for the respondent.

CORAM : R.M. LODHA AND
D.G. KARNIK, JJ

DATED : 20th December 2005.

P.C.:

Heard.

2. Admit.

3. Mr.V.S. Kapse, Advocate waives service for the respondent.

4. Appeal is heard finally at this stage.

5. Since in our view the learned Motion Judge was not justified in passing an order of temporary injunction without even going into the prima facie merits of the case, the matter requires reconsideration by the learned Motion Judge.

6. The appeal is allowed. The impugned order is set aside. Notice of Motion no. 2818 of 2003 is restored to file for fresh consideration in accordance with law.

7. All contentions of the parties are kept open to be agitated before the learned Motion Judge.

8. Liberty to the plaintiff to apply to the learned Motion Judge for fixing the early date of hearing of Notice of Motion.

(R.M. LODHA, J)

(D.G. KARNIK, J)